Supreme Court, U.S.
FILED
07-3 APR 20 2007
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No.

Term.2007

In The
Supreme Court of the United States

Justinian Rweyemamu.
Petitioner
v.
Connecticut Commission on Human Rights and Opportunities
et al
Respondents

Petition for Writ of Certiorari to the Connecticut
Appellate Court

APPENDIX (A) OF PETITIONER FOR A WRIT OF CERTIORARI

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SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-06-0251

Justinian Rweyemamu

v.

Commission on Human Rights and Opportunities et al

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (98 Conn.App. 646 [AC 27108], it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

CYNTHIA M. GWOREK
ASSISTANT CLERK-
APPELLATE

Dated: 1/25/2007

Notice Sent: 1/25/07
Clerk, Superior Court, New Britain CV05 4003388
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Harold Burbank
Commission on Human Rights and Opportunities

2.

1. 98 Conn. App. 646; Rweyemamu v. Commission on Human Rights & Opportunities;

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JUSTINIAN **RWEYEMAMU** v. COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL.

[Cite as **Rweyemamu** v. Commission on Human Rights & Opportunities, 98 Conn. App. 646]

(AC 27108)

Flynn, C. J., and Gruendel and Peters, Js.

Argued September 21 -- officially released December 12, 2006

(Appeal from Superior Court, judicial district of New Britain, Hon. Howard T. Owens, Jr., judge trial referee.)

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Harold H. Burbank II, for the appellant (plaintiff).

Charles Krich, principal attorney, for the appellee (named defendant).

Meredith G. Diette, for the appellee (defendant Roman Catholic Diocese of Norwich).

Opinion

PETERS, J.

The first amendment to the United States constitution protects religious institutions from governmental interference with their free exercise of religion.(fn1) Accordingly, many courts have recognized a ministerial exception to judicial authority to adjudicate employment disputes between religious institutions and their religious leaders. In this case, the commission on human rights and opportunities (commission) invoked the ministerial exception to conclude that it lacked subject matter jurisdiction to hear allegations of employment discrimination brought by a Catholic priest against his diocese. We must decide whether the trial court properly dismissed the priest's appeal from the dismissal of his administrative complaint. The priest argues that for prudential reasons buttressed by a recent decision of the United States Court of Appeals for the Second Circuit, we should decline to recognize a ministerial exception to the jurisdiction of the commission. We disagree and affirm the judgment of the trial court.

On April 25, 2005, the plaintiff, Father Justinian **Rweyemamu**, a Roman Catholic priest, filed a revised administrative appeal to the trial court to challenge the validity of a decision by the defendant commission to dismiss his complaint of discriminatory employment practices on jurisdictional grounds. His administrative complaint

alleged that the defendant, the Roman Catholic Diocese of Norwich (diocese), had engaged in discriminatory employment practices in violation of General Statutes § 46a-60.(fn2) The trial court concluded that neither state agencies nor state courts have subject matter jurisdiction to review purely ecclesiastical disputes. Accordingly, it dismissed the plaintiff's appeal.

In his appeal to this court, the plaintiff's principal claim is that the defendant commission and the trial court improperly invoked a ministerial exception to administrative jurisdiction because Connecticut law has never recognized such an exception. In the alternative, he claims that the jurisprudential underpinnings of the ministerial exception have been dispositively demonstrated to be flawed in a binding decision of the Second Circuit, *Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006). We are not persuaded.

I

We begin our analysis of the plaintiff's principal claim that the commission should have exercised jurisdiction by setting forth our standard of review. "Jurisdiction of the subject-matter is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong. . . . A court has subject matter jurisdiction if it has the authority to adjudicate a particular type of legal controversy. . . . It is a familiar principle that a court which exercises a limited

and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . .

"This concept, however, is not limited to courts. Administrative agencies [such as the commission] are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves. . . . We have recognized that [i]t is clear that an administrative body must act strictly within its statutory authority, within constitutional

limitations and in a lawful manner. . . . It cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power." (Internal quotation marks omitted.) *Figueroa v. C & S Ball Bearing*, **237 Conn. 1**, 4, 675 A.2d 845 (1996). "We . . . note that because [a] determination regarding [an agency's] subject matter jurisdiction is a question of law, our review is plenary." (Internal quotation marks omitted.) *Salmon v. Dept. of Public Health & Addiction Services*, **58 Conn. App. 642**, 649, 754 A.2d 828 (2000), rev'd on other grounds, **259 Conn. 288**, 788 A.2d 1199 (2002).

Our starting point for determining whether the commission properly relied on the ministerial exception to decline to exercise subject matter jurisdiction over the plaintiff's complaint is the affidavit that the plaintiff filed to initiate these proceedings. The plaintiff alleged that he was a "black African ordained Catholic priest from Tanzania, East Africa who [had] been employed by [the diocese] as a priest for over ten years in the position of parochial vicar; the last five of which [had been] at St. Bernard's Church, Rockville, Connecticut." He further alleged that he had been refused a promotion to the position of administrator for St. Bernard's parish

and that a less-qualified, white deacon had been appointed in his place.

The plaintiff also alleged that the diocese had harassed him about his role in working for a nondenominational, nonprofit organization called Buguruka Orphan and Community Economic Development, Inc. (organization). The plaintiff claimed that the diocese "has demanded, and continues to

demand to date, through its top administrator, Bishop Michael Cote, to investigate [the organization] by interviewing me about [the organization] in Bishop Cote's office, under alleged but *canonically* incorrect church authority . . . ." (Emphasis in original.)

The plaintiff further alleged that the diocese had engaged in race, ethnicity, national origin and alienage based discrimination when it failed to promote him on April 7, 2004, and August 27, 2004. Additional alleged instances of discrimination, beginning on March 30, 2004, included poor evaluations, retaliation and harassment.

The commission's dismissal of the plaintiff's complaint for lack of subject matter jurisdiction was based on its recognition that "the courts and the commission recognize a `ministerial exception' with respect to individuals employed by religious institutions in a `clergy' or `ministerial' capacity. The commission and the courts have determined that such are the `lifeblood' of the church, and any government [interference] between a church and its ministers would violate the first amendment to the constitution."

The trial court upheld the commission's application of the ministerial exception as reflected in federal antidiscrimination statutes and case law. The court decided that the ministerial exception grants "religious institutions . . . the authority to manage their internal affairs, select their leaders without interference and

resolve their own disputes." The court concluded that "[t]he case before [it] involve[d] the basic and fundamental question of who will preach from the altar and who will occupy the

rectory at St. Bernard's. The very nature of the question in and of itself makes it clear that this court lacks jurisdiction. Whether it comes from the priest, rabbi or clergyman or from an administrative agency such as the [commission], the court is without jurisdiction to interfere."

The issue of whether the ministerial exception applies to Connecticut's employment discrimination laws is one of first impression for our appellate courts. Like the federal government in its enactment of Title VII, 42 U.S.C. § 2000e et. seq., Connecticut prohibits discrimination in employment. General Statutes § 46a 60. When interpreting § 46a-60, our Supreme Court has "often looked to federal employment discrimination law for enforcing our own [antidiscrimination] statute." (Internal quotation marks omitted.) *Thames Talent, Ltd v. Commission on Human Rights & Opportunities*, **265 Conn. 127**, 139, 827 A.2d 659 (2003).

As the United States Court of Appeals for the District of Columbia Circuit has observed, "[t]he ministerial exception is judicial shorthand for two conclusions: the first is that the imposition of secular standards on a church's employment of its ministers will burden the free exercise of religion; the second, that the state's interest in eliminating employment discrimination is outweighed by a church's constitutional right of autonomy in its own domain." *Equal Employment Opportunity Commission v. Catholic University of America*, 83 F.3d 455, 467 (D.C. Cir. 1996). We are mindful that the protections afforded by the first amendment apply to state as well as federal governmental actions. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940) ("Fourteenth Amendment has rendered the legislatures of the states as incompetent

as Congress to enact . . . laws [that violate the first amendment's religion clauses]").

The ministerial exception's role in protecting important constitutional rights was first articulated in *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir.), cert. denied, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972). In that case, the United States Court of Appeals for the Fifth Circuit concluded that the District Court did not have jurisdiction to decide a gender discrimination claim under Title VII. Id. The reason for the invocation of this ministerial exception was that "[a]n application of the provisions of Title VII to the employment relationship which exists between . . . a church and its minister, would involve an investigation and review of these practices and decisions and would, as a result, cause the [s]tate to intrude upon matters of church administration and government which have so many times before been proclaimed to be matters of a singular ecclesiastical concern. Control of strictly ecclesiastical matters could easily pass from the church to the [s]tate. The church would then be without the power to decide for itself, free from state interference, matters of church administration and government." Id., 560.

It bears emphasis that the ministerial exception is jurisdictional rather than evidentiary. Religious institutions need not rely on proof of affirmative defenses in employment discrimination suits but may categorically resist the judicial intrusion implicit in inquiry into their employment practices and relationships. *Equal Employment Opportunity Commission v. Catholic University of America*, supra, 83 F.3d 466, citing *National Labor Relations Board v. Catholic Bishop of Chicago*, 440 U.S. 490, 502, 99 S. Ct. 1313, 59 L. Ed. 2d 533 (1979); *Combs*

v. Central Texas Annual Conference of the United Methodist Church, 173 F.3d 343, 350 (5th Cir. 1999) ("[i]n short, we cannot conceive how the

federal judiciary could determine whether an employment decision concerning a minister was based on legitimate or illegitimate grounds without inserting ourselves into a realm where the Constitution forbids us to tread, the internal management of a church").

We are persuaded that Connecticut administrative law, consistent with these persuasive precedents, must recognize the ministerial exception in the enforcement of our employment discrimination statutes.(fn3) The constitutional guarantee of the free exercise of religious authority requires secular institutions to defer to the decisions of religious institutions in their employment relations with their religious employees.(fn4) In broader terms, administrative and judicial intervention in religious employment relationships would violate the constitutional prohibition against civil entanglement in ecclesiastic disputes. Cf. *New York Annual Conference v. Fisher*, **182 Conn. 272**, 278, 438 A.2d 62 (1980).

The ministerial exception prevents courts or government agencies from exercising jurisdiction over a religious institution's actions regarding the employment of

its ministers. In concluding that the commission properly relied on the ministerial exception in not exercising subject matter jurisdiction, we limit the exception's scope to the narrow scope

recognized by the commission, namely that the exception applies only to the employment of ministers and clergy broadly defined.(fn5)

II

The plaintiff's alternate claim is that, to the extent that federal case law has established a ministerial exception, that case law should not be given persuasive effect because the exception has been set aside by Congress through its enactment of the Religious Freedom Reformation Act of 1993, 42 U.S.C. § 2000bb et seq.(fn6) In particular, the plaintiff urges us to follow the

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decision of the United States Court of Appeals for the Second Circuit in *Hankins v. Lyght*, supra, 441 F.3d 99. In that case, a divided court held that Congress impliedly had amended the antidiscrimination statutes, such as the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., to make them enforceable without regard to the free exercise clause of the first amendment. In asking us to follow the Second Circuit, the plaintiff asks us to apply the reasoning of *Hankins* to a Connecticut statute, General Statutes § 52-571b.(fn7) The plaintiff claims that this statute has the same effect as the Religious Freedom Reformation Act and that we should find that § 52-571b similarly precludes the application of the ministerial exception. We disagree.

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The plaintiff's argument for the direct applicability of *Hankins* is flawed for two reasons. First, the decisions of the Second

Circuit, while often persuasive, do not bind the decisions of Connecticut courts. See *Turner v. Frowein*, **253 Conn. 312**, 341, 752 A.2d 955 (2000). Second, the federal statute on which the court of appeals relied, the Religious Freedom Reformation Act, is unconstitutional as applied to state law. *Boerne v. Flores*, 521 U.S. 507, 536, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997).

The plaintiff's argument devolves, therefore, into the proposition that we should look to *Hankins* as persuasive guidance for the interpretation of § 52-571b because, in his view, our statute is analogous to the federal Religious Freedom Reformation Act. The court of appeals read the federal statute as evidencing Congress' intent that antidiscrimination statutes should be enforced, even against religious institutions. *Hankins v. Lyght*, supra, 441 F.3d 102. The question is whether § 52-571b manifests a similar intent.

We might simply dismiss the plaintiff's statutory argument because he has failed to support it by adequate briefing. See *Knapp v. Knapp*, **270 Conn. 815**, 823 n.8. 856 A.2d 358 (2004) (Supreme Court "consistently [has] held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where the parties cite no law and provide no analysis of their claims, we do not review such claims." [Internal quotation marks omitted.]). In light of the importance of the plaintiff's argument, however, we have undertaken to ascertain its merits by examining its text and its legislative history. Our examination persuades us that the plaintiff's argument has no merit.

To decide whether § 52-571b has displaced the ministerial exception, we look to well-established rules of

interpretation. "[Although] [o]rdinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes . . . when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law." (Internal quotation marks omitted.) *Board of Education v. State Board of Education*, **278 Conn. 326**, 331, 898 A.2d 170 (2006). In the present case, § 52-571b has not been subject to judicial scrutiny in determining its application to our state's employment discrimination laws. Our review therefore is plenary.

Our interpretation of § 52-571b must begin by ascertaining whether the statute has a plain meaning. General Statutes § 1-2z;(fn8) see also *Kinsey v. Pacific Employers Ins. Co.*, **277 Conn. 398**, 408, 891 A.2d 959 (2006). In our view, the language of § 52-571b, particularly with respect to its application to the ministerial exception, is not plain and unambiguous.

At first glance, the most directly relevant provisions of § 52-571b are subsections (a) and (b), which require courts to find a compelling state interest before a governmental actor, such as the commission, may substantially burden "a person's exercise of religion." Under the circumstances of this case, subsections (a) and (b) would seem to require the commission, in its adjudicative capacity, to apply the strict scrutiny test to any

the state or any political subdivision of the state.

"(d) Nothing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief.

"(e) Nothing in this section shall be construed to affect, interpret or in any way address that portion of article seventh of the Constitution of the state that prohibits any law giving a preference to any religious society or denomination in the state. The granting of government funding, benefits or exemptions, to the extent permissible under the Constitution of the state, shall not constitute a violation of this section. As used in this subsection, the term `granting' does not include the denial of government funding, benefits or exemptions.

"(f) For the purposes of this section, `state or any political subdivision of the state' includes any agency, board, commission, department, officer or employee of the state or any political subdivision of the state, and `demonstrates' means meets the burdens of going forward with the evidence and of persuasion."

8. General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

9. The following colloquy took place at the March 22, 1991 public hearing:

"Michael Farris: . . . Connecticut has a law that says you

can't discriminate in employment on the basis of gender, as it should.

"[Representative Richard D. Tulisano]: Right.

"Michael Farris: Application of [the *Smith* case] to the Catholic church. Catholic church will not hire women priests, will not ordain women priests. Should the Catholic church be forced to ordain women priests? Well as a matter of constitutional law, they should not.

"Should the black Musl[i]m church be forced to ordain white people-- no. The black Musl[i]m church should be allowed to have their view about the proper people that they're going to have as their ministers." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1991 Sess., pp. 800-801.

10. Such examples include the lighting of candles in church, the receiving of wine at holy communion, wearing a yarmulke in court: 36 H.R. Proc., Pt. 14, 1993 Sess., p. 4923, remarks of Representative Richard D. Tulisano; forcing the Amish to use reflectors on their horse drawn buggies, and performing autopsies where it was against the deceased's religion. Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1993 Sess., p. 1232, remarks of Robert Leikind, director, Connecticut office of the Anti-Defamation League.

11. We note that there have been several Superior Court cases dealing with the applicability of General Statutes § 52-571b to zoning laws. *Cambodian Buddhist Society of Connecticut, Inc v. Planning & Zoning Commission*, Superior Court, judicial district of Danbury, Docket No. CV-03-0350572-S (November 18, 2005) (40 Conn. L. Rptr. 410); *First Church of Christ, Scientist v. Historic District Commission*, **46 Conn. Sup. 90**,

claim of infringement of the diocese's religious freedom rather than to apply the ministerial exception.

These subsections must, however, be read in conjunction with subsection (d), which provides that "[n]othing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief." General Statutes § 52-571b (d). The question becomes, therefore, whether secular interference with the employment of ministerial staff by a religious organization would constitute a "burden" on "religious belief." To answer this question, we must decide whether a religious institution's employment of ministerial staff is considered an "exercise of religion" under subsections (a) and (b) or a "religious belief" under subsection (d).

Because the text of § 52-571b does not provide an unambiguous answer to this question, it is useful to recall the historical events surrounding its passage. Beginning with *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963), the United States Supreme Court required that governmental actions burdening the free exercise of religion be tested to determine whether they further a "compelling state interest." See also *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). *Sherbert* and its progeny apply the compelling state interest test because, in protecting religious freedom, "[i]t is basic that [the] showing merely of a rational relationship to some colorable state interest would [not] suffice; in this highly sensitive constitutional area, [o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation." (Citation omitted; internal quotation marks omitted.) *Sherbert v. Verner*, supra, 406-407.

After twenty-seven years in which the United States Supreme Court followed *Sherbert*, that court changed course in *Employment Division, Dept. of Human*

Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L .Ed. 2d 876 (1990). *Smith* held that the free exercise rights of a member of the Native American Church did not prohibit the government from enforcing the generally applicable drug laws that criminalize the use of peyote, even if used in a of religious ceremony. Id., 885. In so holding, the court concluded "that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the [compelling state interest] test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development. . . . To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is compelling--permitting him, by virtue of his beliefs, to become a law unto himself . . . contradicts both constitutional tradition and common sense." (Citations omitted; internal quotation marks omitted.) Id.

Although the legislative history of our statute is silent as to the precise meaning of either "exercise of religion" or "religious belief," the history does reveal that the overarching purpose of § 52-571b was to provide more protection for religious freedom under Connecticut law than the *Smith* decision would provide under federal law. As Representative Richard D. Tulisano stated when introducing the bill to the House of

Representatives: "This bill enhances religious freedom and puts Connecticut once again in the forefront of supporting the variety of denominations that exist in the State and supporting that free exercise there." 36 H.R. Proc., Pt. 14, 1993 Sess., p. 4923. Members of the Senate echoed this sentiment: "[T]o be absolutely clear, this does not--this bill

does not expand, contract or alter the ability of a claimant to obtain relief in a manner consistent with the Supreme Court's free exercise jurisprudence under the compelling interest test prior to the *Smith* case." 36 S. Proc., Pt. 8, 1993 Sess., p. 2785, remarks of Senator George C. Jepsen.

The legislature illustrated its intent to reverse the effects of the *Smith* case by considering a number of specific situations in which its application would lead to the decreased protection of religious freedoms. Of particular import for our decision in this case is the testimony of one proponent who pointed out that *Smith* would have the undesired consequence of making employment discrimination laws applicable to religious institutions.(fn9) Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1991 Sess., p. 801. Although this testimony was presented at a public hearing on a similar bill introduced two years prior to the passage of § 52571b, this history demonstrates that the legislature was aware of the impact that *Smith* might have had on employment discrimination laws.

Our review of the legislative history leads us to conclude that the legislature was, in general, mindful of the impact that *Smith* might have had on employment discrimination laws, but that the legislature was, in particular, protecting individual religious practices

through the strict scrutiny test. In protecting the religious practices of individuals, the legislature made the distinction between the "exercise of religion," which it protected with the strict scrutiny test found in subsections (a) and (b) of § 52-571b, and "religious beliefs," which the legislature prevented from being burdened by subsection (d). When interpreting what the legislature meant by using this distinction, we are mindful that when the legislature enacts a statute, it is presumed to be aware of the status of the law relevant to the statute. See *St. George v. Gordon*, **264 Conn. 538**, 553, 825 A.2d 90 (2003) ("legislature is presumed to have acted with knowledge of existing statutes" [internal quotation marks omitted]); *Considine v. Waterbury*, **279 Conn. 830**, 844, 905 A.2d 70 (2006) ("legislature is presumed to be aware of prior judicial decisions involving common-law rules" [internal quotation marks omitted]).

In our interpretation of the meaning that the legislature intended to give to "religious belief" in subsection (d) of § 52-571b, we look to United States Supreme Court jurisprudence on the distinction between the protection of religious practices and religious beliefs. In particular, we note that the United States Supreme Court has recognized that the internal governance of a religious institution, including the employment of ministers and clergy, is a protected religious belief of the institution. See *Serbian Orthodox Diocese v. Milivojevech*, 426 U.S. 696, 713, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 97 L. Ed. 120 (1952); see also *Petruska v. Gannon University*, 462 F.3d 294, 306-307 (3d Cir. 2006) ("[L]ike an individual, a church in its collective capacity must be free to express

religious *beliefs*, profess matters of faith, and communicate its religious message. Unlike an individual who can speak on her own behalf, however, the church as an institution must retain the corollary right to select its voice. A minister

is not merely an employee of the church; she is the embodiment of its message." [Emphasis added.]).

The United States Court of Appeals for the Eleventh Circuit has elaborated on the different protections provided for religious practice and religious belief under federal constitutional law:" The *Smith* decisionfocused on the first type of government infringement on the right of free exercise of religion--infringement on an individual's ability to observe the practices of his or her religion. The second type of government infringement-- interference with a church's ability to select and manage its own clergy--was not at issue in *Smith*. The Court's concern in *Smith* was that if an individual's legal obligations were contingent upon religious beliefs, those beliefs would allow each individual to become a law unto himself. . . . The ministerial exception does not subvert this concern; it was not developed to provide protection to individuals who wish to observe a religious *practice* that contravenes a generally applicable law. Rather, the exception only continues a long-standing tradition that churches are to be free from government interference in matters of church governance and administration. . . . Also, because the ministerial exception is based on this tradition and not on strict scrutiny, the Court's rejection in *Smith* of the compelling interest test does not affect the continuing vitality of the ministerial exception." (Citations omitted; emphasis added; internal quotation marks omitted.) *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203

F.3d 1299, 1303-1304 (11th Cir. 2000). Indeed, "[a]ll circuits to have addressed the question have recognized the continuing vitality of the exception after the Supreme Court's decision in [*Smith*]. See *Gellington v. Christian Methodist Episcopal Church*, [supra, 1302- 1304]; *Combs v. Central Tex. Annual Conference of the United Methodist Church*, [supra, 173 F.3d 347-50]; [*Equal Employment Opportunity Commission v.*

Catholic University of America, supra, 83 F.3d 461- 63]." (Citation omitted.) *Equal Employment Opportunity Commission v. Roman Catholic Diocese of Raleigh, North Carolina*, 213 F.3d 795, 800 n.* (4th Cir. 2000).

In light of the distinctions made between religious practice and religious belief in the federal courts, we conclude that the legislature intended to maintain this distinction with its use of the language in § 52-571b. By protecting "free exercise" with the strict scrutiny test of subsections (a) and (b), the legislature intended to provide greater protection to religious *practices*, such as the ritualistic use of peyote at issue in *Smith*. As noted, the legislative history is replete with examples of religious practices that the legislature intended to protect under § 52-571b's strict scrutiny test.(fn10)

If we interpreted the "exercise of religion" language used in subsections (a) and (b) to apply to all religious beliefs, including a religious institution's employment of ministers and clergy, we would render the language exempting religious beliefs from the application of the statute superfluous. We do not interpret the language of one part of a statute in a manner that would make another part of the statute superfluous. See *Semerzakis v. Commissioner of Social Services*, **274 Conn. 1**,

18-19, 873 A.2d 911 (2005) ("[T]he legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." [Internal quotation marks omitted.]). If subsections (a)

and (b) provided the only means of protecting religious freedom in Connecticut, then there would be no need for subsection (d)'s protection of "religious belief." Because we must give meaning to the language used by the legislature; see id.; we conclude that the employment of ministers and clergy by a religious institution is a "religious belief" under subsection (d).(fn11)

Because we are persuaded that the employment practices of religious institutions are a form of "religious belief" for purposes of subsection (d), we conclude that the language of that subsection prevents the application of the strict scrutiny test of subsections (a) and (b). Section 52-571b, therefore, does not displace the ministerial exception. Accordingly, the trial court properly affirmed the commission's application of the ministerial exception and its determination that it lacked jurisdiction.

The judgment is affirmed.

In this opinion the other judges concurred.

Footnotes:

1. The free exercise clause of the first amendment to the United States constitution provides: "Congress shall make no law

respecting an establishment of religion, or *prohibiting the free exercise thereof* . . . ." (Emphasis added.)

2. General Statutes § 46a-60 (a) provides in relevant part: "It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability, including, but not limited to, blindness . . . ."

3. We note that this court has upheld a trial court's determination that it lacked jurisdiction, on first amendment grounds, to delve into the workings of a church where one of its ministers was sued for negligent infliction of emotional distress. *DeCorso v. Watchtower Bible & Tract Society of New York, Inc.*, **78 Conn. App. 865**, 880, 829 A.2d 38, cert. denied, **266 Conn. 931**, 837 A.2d 805 (2003). This court concluded that "[u]nder both the free exercise clause and the establishment clause, the first amendment prohibits civil courts from resolving disputed issues of religious doctrine and practice." Id. Although we did not specifically adopt a ministerial exception for negligent infliction of emotional distress in *DeCorso*, our holding in that case did recognize that our courts are not well-suited to resolve disputes involving religious doctrine.

4. It bears mention that our General Statutes recognize that religious institutions, as incorporated entities, are governed by their own internal doctrine and laws. See generally General

Statutes §§ 33-265 through 281a. In particular, corporations formed under the Roman Catholic Church "shall at all times be subject to the general laws and discipline of the Roman Catholic Church . . ." General Statutes § 33-281.

5. There is no dispute in this case that the plaintiff was a ministerial employee as he had been ordained a Roman Catholic priest in April, 1992, and has served continuously in the Diocese of Norwich.

> The issue of whether the ministerial exception may be applied to nonministerial staff of a religious institution is not before us in this case. We note, however, that Connecticut has not applied the exception to such situations in the past. See *Commission on Human Rights & Opportunities v. Archdiocesan School Office*, **202 Conn. 601**, 608, 522 A.2d 781 (reversing judgment of dismissal where commission had served interrogatories on archdiocesan school office during investigation of religious discrimination), appeal dismissed, 484 U.S. 805, 108 S. Ct. 51, 98 L. Ed. 2d 15 (1987).

6. The substantive portion of the Religious Freedom Reformation Act at issue in *Hankins v. Lyght*, supra, 441 F.3d 99, 42 U.S.C. § 2000bb-1, provides: "(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

> "(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

"(1) is in furtherance of a compelling governmental interest; and

"(2) is the least restrictive means of furthering that compelling governmental interest.

"(c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution."

7. General Statutes § 52-571b provides: "Action or defense authorized when state or political subdivision burdens a person's exercise of religion. (a) The state or any political subdivision of the state shall not burden a person's exercise of religion under section 3 of article first of the Constitution of the state even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

"(b) The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest.

"(c) A person whose exercise of religion has been burdened in violation of the provisions of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against

the state or any political subdivision of the state.

"(d) Nothing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief.

"(e) Nothing in this section shall be construed to affect, interpret or in any way address that portion of article seventh of the Constitution of the state that prohibits any law giving a preference to any religious society or denomination in the state. The granting of government funding, benefits or exemptions, to the extent permissible under the Constitution of the state, shall not constitute a violation of this section. As used in this subsection, the term `granting' does not include the denial of government funding, benefits or exemptions.

"(f) For the purposes of this section, `state or any political subdivision of the state' includes any agency, board, commission, department, officer or employee of the state or any political subdivision of the state, and `demonstrates' means meets the burdens of going forward with the evidence and of persuasion."

8. General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

9. The following colloquy took place at the March 22, 1991 public hearing:

"Michael Farris: . . . Connecticut has a law that says you

can't discriminate in employment on the basis of gender, as it should.

"[Representative Richard D. Tulisano]: Right.

"Michael Farris: Application of [the *Smith* case] to the Catholic church. Catholic church will not hire women priests, will not ordain women priests. Should the Catholic church be forced to ordain women priests? Well as a matter of constitutional law, they should not.

"Should the black Musl[i]m church be forced to ordain white people-- no. The black Musl[i]m church should be allowed to have their view about the proper people that they're going to have as their ministers." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1991 Sess., pp. 800-801.

10. Such examples include the lighting of candles in church, the receiving of wine at holy communion, wearing a yarmulke in court; 36 H.R. Proc., Pt. 14, 1993 Sess., p. 4923, remarks of Representative Richard D. Tulisano; forcing the Amish to use reflectors on their horse drawn buggies, and performing autopsies where it was against the deceased's religion. Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1993 Sess., p. 1232, remarks of Robert Leikind, director, Connecticut office of the Anti-Defamation League.

11. We note that there have been several Superior Court cases dealing with the applicability of General Statutes § 52-571b to zoning laws. *Cambodian Buddhist Society of Connecticut, Inc v. Planning & Zoning Commission*, Superior Court, judicial district of Danbury, Docket No. CV-03-0350572-S (November 18, 2005) (40 Conn. L. Rptr. 410); *First Church of Christ, Scientist v. Historic District Commission*, **46 Conn. Sup. 90**,

738 A.2d 224 (1998), aff'd, **55 Conn. App. 59**, 737 A.2d 989, cert. denied, **251 Conn. 923**, 742 A.2d 358 (1999). Because of the factual difference between those cases and the present one, we do not address the issue of how the compelling state interest test should be applied, nor do we find those cases helpful in interpreting the language of § 52-571b.

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CV 400 33 88S
FATHER JUSTINIAN RWEYEMAMU

VS

CT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

SUPERIOR COURT
JD OF FAIRFIELD

AT NEW BRITAIN

OCTOBER 19. 2005

MEMORANDUM OF DECISION

The sole issue to be decided by this court is whether or not the Commission on Human Rights and Opportunities (CHRO) had the requisite jurisdiction to decide whether Bishop Micahel Cote. of the Catholic Diocese of Norwich. in any way discriminated in failing to appoint Father Justinian Rweyemamu to the position of pastor of St. Bernard's Roman Catholic Church in Rockville. Connecticut . In addition to this case Father Rweyemamu has a pending similar claim in the United States District Court for the Diestrict of Connecticut.

On December 1. 2004 the CHRO dismissed the petitioner's complaint for lack of subject matter jurisdiction because the Free Exercise Clause of the Unites States Constitution bars civil tribunals from reviewing employment discrimination claims made by ministers against the religious institutions employing them.

On April of 1992, petitioner. a black African. pursuant to Canon law, was ordained a Roman Catholic priest in the Norwich Diocese. He served in several parishes and in August. 1999 was serving as parochial vicar at St. Bernard's (A parochial vicar is an ordained priest). When the church pastor. Father John White. was in the process of retiring, he told the petitioner that Deacon Michael Berstene was to be appointed

as the parish administrator effective April 30, 2004. Deacon Berstene was not an ordained priest.

The parish at that time also had another ordained priest of Indian origin. Petitioner claims that in August 2004 he applied for several pastoral positions including St. Bernard's but was neither offered an interview nor appointed. Having not been as either Pastor or Parochial Administrator at St. Bernard's, in September of 2004 Father Rweyemamu filed his claim of employment discrimination with the CHRO. On December 1, 2004, the CHRO, sua sponte , dismissd Father Rweyemamu's complaint because it lacked subject matter jurisdiction. The CHRO in its order of dismissal noted a "ministerial exception" to the protection offered by Connecticut General Statutes Sec. 46a-60. CHRO's position evolved from case law surrounding Title VII, a federal law prohibiting discrimination in employment that is akin to the Connecticut statute that prohibits unlawful employment practice. Connecticut General Statute 46a-60(a)(1).

This Court must look to federal law for guidance on interpreting Connecticut discrimination law and the analysis of same provides the same result. State v. Commission on Human Rights and Opportunities, 211 Conn. 464, 558A.2d 1120 (1989). The federal courts have carved out a "ministerial exception" not found in the wording of Title VII. Title VII specifically does not allow claims of discrimination against religious corporations "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation...of its activities." 42 USC Sec.2000e-1(a), hereinafter referred to as Sec. 702. A claim that Sec.702 impermissibly entangles church and state is devoid of logic: Sec. 702 avoids the kind of intrusive inquiry int religious beliefs as our founding fathers envisioned. The

Supreme Court has never indicated that statutes that give special weight to religious considerations are per se invalid. Laws discriminating among religions should be carefully scrutinized but such a test is not required for the use of finding a uniform benefit to all religions.

The petitioner is asking this court to review purely ecclesiastical matters. An agency like a court must act within its institutional limitations. Where the First Amendment to the United States Constitution precludes courts from exercising subject matter jurisdiction over a matter, state agencies must likewise lack subject matter jurisdiction. NLRB v Catholic Bishop, 440 US 490 (1979).

This case could not present a clearer case wherein the courts and the governmental agencies are mandated and required to abstain or else violate the Free Exercise clause of our Constitution. Religious institutions have the authority to manage their internal affairs, select their leaders without interference and resolve their own disputes. Corp. of the Presiding Bishop of the Church of Latter Day Saints v. Amos, 483 US 327, 341 (1987)(Brennan, J.) In concurring opinion.

The claims set forth in Father Rweyemamu's complaint evoke sympathy and sentiment but cases cannot be resolved based on these considerations. The rule of law determines how cases will be decided and here there is no dispute in the law. The CHRO's decision reflects a sensitivity to constitutional values.

The case before the court involves the basic and fundamental question of who will preach from the altar and who will occupy the rectory at St. Bernard's. The very nature of the question in and of itself makes it clear that this Court

lacks jurisdiction. Whether it comes from a priest, rabbi, clergyman or from an administrative agency such as CHRO, the Court is without jurisdiction to interfere.

Plaintiff's appeal is dismissed.

Owens, JTR

Commission on Human Rights and Opportunities
100 Broadway
Norwich, CT 06360 (860) 886-5703
December 1, 2004

E-Certified No. 91 7108 2133 3930 9246 3710

Fr. Justinian Rweyemamu
St. Bernard's Church
25 St. Bernard's Terrace
Rockville, CT 06066

RE: NOTICE OF FINAL AGENCY ACTION, NO REASONABLE CAUSE/ADMINISTRATIVE DISMISSAL DETERMINATION, CHRO NO. 05410120/Fr. Rweyemamu, EEOC NO. 16aa402102

Dear Father Rweyemamu:

The investigator of this agency assigned to the above entitled complaint has completed the processing of the complaint and the complaint has been closed as:

Dismissed for No Reasonable Cause - Lack of Jurisdiction. The Complainant is a Roman catholic Priest. The Courts and the Commission recognize a ministerial exception with the respect to individuals employed by religious institutions in a clergy or ministerial capacity. The Commission and the Courts have determined that such are the "lifeblood" of the Church, and any government interference between a church and its ministers would violate the First Amendment to the Constitution.

A copy of the written summary of the findings is enclosed.

The Complainant may apply for reconsideration of the disposition by filing at the Commission's Regional office (see above for address) within fifteen (15) calendar days from the date of this letter.

The complainant may appeal this disposition to the Superior Court of the State of Connecticut.

Very truly yours,

James M. Flynn
Regional Manager

State of Connecticut
Commission on Human Rights and Opportunities
100 Broadway
Norwich, CT 06360
(860) 886-5703

October 4, 2004

Father Justinian Rweyemamu
St. Bernard's Church
25 St. Bernard's Terrace
Rockville, CT 06606

RE: NOTICE OF DRAFT FINDING OF NO REASONABLE CAUSE-LACK OF SUBJECT MATTER JURISDICTION
CHRO No. 0540120 Father Justinian Rweyemamu v Diocese of Norwich
EEOC No. 16aa402102

Dear Father Rweyemamu:

Notice is hereby given to you that in accordance with the Regulations of Connecticut Agencies, at Section i46a-54-42a(a), a jurisdictional review has been conducted upon your complaint. As a result thereof, it appears that the Commission does not have jurisdiction over your complaint for reasons that it fails to allege facts sufficient enough to constitute a violation of the state's Discriminatory Practices Act. Specifically, the Complainant is a Roman Catholic Priest. The Courts and Commission recognize a "ministerial exception" with respect to individuals employed by religious institutions as "clergy" or "ministerial capacity". The Commission and the Courts have determined that such are the "lifeblood" of the Church, and any government interference between a Church and its ministers

would violate the First Amendment to the Constitution.

Moreover the review has persuaded the Commission that the jurisdictional defect cannot be corrected or cured through amendment. Therefore, in accordance with Section 46a-54-42a(b)(2) of the regulations, you are hereby notified of the Commission's preliminary finding.

Additionally, notice is given that the writing constitutes the Commission's "draft finding of no reasonable cause" in accordance with Regulations of Connecticut State Agencies, at Section 46a-54-59a(a). In this respect, you and your attorney have the right to provide written or oral comments on all evidence in the Commission's file. However, you must exercise this right within fifteen (15) days from the date of mailing this notice and draft finding of "No Reasonable cause due to Lack of Jurisdiction".

We have elected to incorporate the draft finding into the notice letter because the jurisdiction defects are obvious on the face of your affidavit of your complaint. Therefore, there isn't a need to enter separate findings of fact. Instead, you are hereby notified that he facts upon which this preliminary finding is based are set forth in the complaint.

Lastly, you are notified that if you submit comments, these will be considered by the Commission in reaching its ultimate merit based determination on the relevant issues raised by your complaint.

If you have questions or concerns upon your receipt of this letter, please feel free to contact the individual named below. As always, the Commission appreciates your support and cooperation. Sincerely, James M. Flynn, Regional Mgr.

Constitutional Provisions:

US Constitution Preamble

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

US Constitution Article IV, Sec 2

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

1. A person charged in any state with treason, felony, or other crime, shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

US Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a

redress of grievances.

US Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

US Constitution Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

US Constitution Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

US Constitution Amendment XIV, Sec 1

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes:

Connecticut Fair Employment Practices Act

The Act, located at Conn.Gen.Stat.Secs.46a-51 et seq, is referred to in the Petition in total and therefore is not reproduced here to avoid waste.

CGS Sec52-571b:

Sec. 52-571b. Action or defense authorized when state or political subdivision burdens a person's exercise of religion.

1. (a) The state or any political subdivision of the state shall not burden a person's exercise of religion under section 3 of article first of the constitution of the state even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest.

(c) A person whose exercise of religion has been burdened in violation of the provisions of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the state or any political subdivision of the state.

(d) Nothing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief.

(e) Nothing in this section shall be construed to affect, interpret

or in any way address that portion of article seventh of the constitution of the state that prohibits any law giving a preference to any religious society or denomination in the state. The granting of government funding, benefits or exemptions, to the extent permissible under the constitution of the state, shall not constitute a violation of this section. As used in this subsection, the term "granting" does not include the denial of government funding, benefits or exemptions.

(f) For the purposes of this section, "state or any political subdivision of the state" includes any agency, board, commission, department, officer or employee of the state or any political subdivision of the state, and "demonstrates" means meets the burdens of going forward with the evidence and of persuasion

US Age Discrimination in Employment Act (ADEA)

The Act, located at 29 USC Sec, 621 et seq, is referred to in the Petition in total and therefore is not reproduced here to avoid waste.

Civil Rights Act of 1964, Title VII

The Act, located at 42 USC 2000e et seq, is referred to in the Petition in total and therefore is not reproduced here to avoid waste.

Religious Freedom Restoration Act

1. TITLE 42

CHAPTER 21B > § 2000bb-1

§ 2000bb–1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Americans With Disabilities Act

The Act, located at 42 USC 1201 et seq, is referred to in the Petition in total and therefore is not reproduced here to avoid waste.

Attorney Harold H. Burbank, II
220 Albany Turnpike, Building
PO Box 181
Canton Center, CT 06020
860-693-0600 (ph)
860-693-0620 (fax)

October 19, 2004

FAX LETTER

James M. Flynn
CCHRO
100 Broadway
Norwich, CT 06360

Re:Rweyemamu v Diocese of Norwich
CHRO # 0540120
EEOC # 16aa402102

Dear Mr. Flynn:

I am in receipt of your October 4, 2004 preliminary decision in this matter and invoke my client's right to comment on it by today's date before your final decision for reasons herein.

For many factual and state and federal constitutional reasons, the CCHRO October 4, 2004 opinion erroneously relied on the ministerial exception holding set forth in McClure v Salavtion Army, 460 F.2d 553 (5th Cir.1972). First, and perhaps most significantly, McClure is not a US Supreme Court nor even a Second Circuit Court of Appeals case. Cert to the US Supreme Court was denied not because state and federal government must find a ministerial exception in all anti-employment

discrimination law cases, but because the plaintiff did not petition the US Supreme Court on time. The US Supreme Court has yet to hear any case that contemplates a ubiquitous anti-employment discrimination law "ministerial exception". CCHRO has no right to assume or rule, without thorough factual investigation and due process hearings, that it can dismiss Father Rweyemamu's case simply because one old 1972 5th Circuit case addressed "ministerial exception". This posture amounts to agency malfeasance of its duties to defend the human rights of state and US residents and citizens.

Second, McClure was a sex discrimination case, not one based on race, color, national origin and alienage as is the plaintiff's.

Third, Father Rweyemamu's case is supported, not defeated, by several key McClure holdings. In Section I McClure said:

> The language and the legislative history of Section 702 (of Title VII) compel the conclusionthat Congress did not intend that a religious organization be exempted from liability for discriminating against its employees on the basis of race, color, sex or national origin with respect to their compensation, terms, conditions or privileges of employment.

The McClure language on which CCHRO relied in its October 4, 2004 letter to Father Rweyemamu followed, taken from this famous passage on which the 5th Circuit attempted to justify its decision:

> The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be

recognized as of prime ecclesiastical concern. Just as the initial function of selecting a minister is a matter or church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these include the determination of a minister`s salary, his place of assignment, and the duty he is to perform in the furtherance of the religious mission of the church.

However, McClure attempted to build a foundation for its ministerial exception ("lifeblood") theory on key secular and Catholic Canon human rights legal concepts that do not support finding no CHRO jurisdiction in Father Rweyemamu`s case. McClure `s Salvation Army exception was based in part on Gonzalez v. Roman Catholic Archbishop, 280 US 1(1929), where the Archbishop of Manila was challenged by a plaintiff priest denied appointment to a chaplaincy based on the Canon Law (Catholic church law) in 1929 (emphasis added). Gonzalez held specifically:

> In the absence of *fraud, collusion, or arbitrariness,* the decisions of the proper church *tribunals* (emphasis added) on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before secular courts as conclusive, because the parties in interest made them so by contract or otherwise."

Father Rweyemamu clearly alleged fraud, collusion and arbitrariness in his CHRO complaint:

> 7. In April, 2004, a false affidavit falsely dated March 30, 2004, was filed with respondent by my immediate supervisor, Father John White...
>
> 9. On April 7, 2004 I was notified orally by Father John

White, then St. Bernard's Church pastor, that Deacon Michael Berstene, who is white, was by Bishop Michael Cote appointed St. Bernard's parish administrator effective April 30, 2004...Deacon Berstene was not a priest and could not fulfill priesthood obligations decreed by Vatican II, codified by church Canon law, requiring that only priests act in persona Christi for the salvation of souls...On April 17, 2004, I filed with the respondent under church Canon law a "Petition of Recourse Against An Administrative Decree"...Shortly thereafter, Deacon Berstene was removed from the administrator position until a new white pastor, with less experience than I, was hired...

Father Rweyemamu would prove even more evidence of unlawful, discriminatory church fraud, collusion and arbitrariness at CCHRO hearings. For example in Bishop Cote's May 6, 2004 letter to me he said that I could represent Father Justinian at a May 21, 2004 meeting Bishop Cote scheduled to address concerns Bishop Cote had regarding some complaints the bishop had received about BOCED, the Tanzanian charity Father founded. On May 17, 2004 he arbitrarily reversed himself, writing to me that I could not represent Father at the Bishop's May 21, 2004 meeting - that this would be "inappropriate" - though he gave no reasons whatsoever for the change. On May 21, 2004, at his request, I accompanied Father Rweyemamu to the May 21, 2004 meeting, only to see us both turned away at the lobby by the bishop through his agent, Monseigneur Brown. On June 14, 2004, Bishop Cote wrote to me that this occurred because I had "at the last minute" denied his right to any materials he requested, which was not true. BOCED was still attempting to acquire some of these materials which the Bishop knew by email from me. See letters from Bishop Cote to me, attached by fax. Surely I was contesting the bishop's canonical and secular right to claimed materials on

the advice of my Canon law expert (PhD), which Bishop Cote also knew by my emailing him. It is clear that this fact pattern illustrates exactly the kind of arbitrary and fraudulent church behavior precluded by Gonzalez , infra, and at least compelling human rights agencies to investigate legitimate employment discrimination claims made by clergy against their churches. Indeed it is clear that Gonzalez supports the argument that where church administration arbitrariness and fraud are proved any "ministerial exception" to anti-discrimination employment laws cannot apply.

McClure also cites Watson v Jones, 80 US 679 (1871), to support the "ministerial exception", but on the instant facts Watson argues against the exception and for Father Rweyemamu's complaint. Watson concerned church real estate matters decided by the highest ecclesiastical body of the Presbyterian church, and was cited in McClure for the principle that:

> ...whenever the questions of discipline, or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept these decisions as final, and as binding on them...

Clearly Bishop Cote and the Diocese of Norwich are not the highest church judicatories of the Catholic church. Nor are they experts, and certainly not practitioners, of the church's own highly anti-discriminatory canon human rights laws enacted both well before and after the 1972 McClure decision. Canon law itself refers not only to ecclesiastical law, (ius), but has generally broader meaning , including divine law and multiple ecclesiastical law sources, including but not limited to canon codes, and authentic teachings of the magisterium like the Second Vatican Council. Modern canon law also does not

preclude recognition or incorporation of compatible secular law. For example the Code of Canon Law of 1983 at Canon 22 states:

> Civil laws to which the law (ius) of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise...

More importantly, canon law historically and specifically precludes racial, ethnic, color, and alienage discrimination and encourages church and civil authority enforcement of anti-discrimination norms. For example the December 7, 1965 Second Vatican Counsel pastoral constitution *Gaudium et spes* #29 stated:

> Forms of social or cultural discrimination in basic personal rights on the grounds of sex, race, color, social conditions, language or religion must be curbed and eradicated as in-compatible with God's design..

Second Vatican Council's December 7, 1965 declaration on religious liberty, *Dignitatis Humanae* , #6, stated:

> The civil authority must see to it that the equality of the citizens before the law, which is itself an element of the common good of society, is never violated either openly or covertly ***for religious reasons and that there is no discrimination among citizens*** (emphasis added)...

and at religious liberty #7:

> ***Since civil society has the right to protect itself against possible abuses committed in the name of religious***

freedom the responsibility of providing such protection rests especially with the civil authority (emphasis added).

The October 28, 1965 Second Vatican Council declaration *Nostra Aetate*, #5, stated:

> There is no basis either in theory or in practice for any discrimination between individual and individual, or between people and people arising either from human dignity or from the rights which flow from it. Therefore ***the Church reproves, as foreign to the mind of Christ, any discrimination*** against people or any harassment of them ***on the basis of their race, color, condition in life or in religion*** (emphasis added).

The Code of Canon Law's declaration of fundamental equality of every human being states at canon 208:

From their rebirth in Christ, there exists among the Christian faithful a true equality regarding dignity and action by which they all cooperate in building up the Body of Christ according to one's own condition and function.

Canon 1286 states:

> Administrators of goods: (1) in the employment of workers are to observe meticulously also the civil laws concerning labor and social policy, according to the principles handed on by the Church.

The compelling doctrinal Catholic traditions, in law, policy and culture, of upholding human dignity, and duties they direct to civil authority to do likewise, quite specifically in cases concerning race, color, alienage and nationality discrimination,

clearly demonstrate why the McClure ministerial exception does not apply in the Catholic context, and thus Father Rweyemamu's case, as Catholic authorities normally would be he first to reject the defense as violative of the highest church thinking and practices. It is precisely because Father Rweyemamu's bishop refuses to recognize both church and state laws and policies precluding employment discrimination based on race, color, alienage and national origin that compels CHRO to take jurisdiction of this case.

Father also argues that CHRO cannot refuse jurisdiction of his case because CHRO has a duty to address the "collision course" scholars foresee for conflicting legal principles in this area of the law, articulated in McClure, infra, and Employment Divison v Smith, 494 US 872 (1990). Where McClure held that the state cannot due to "free exercise" US Constitution principles regulate ecclesiastic relations between the church and clergy even if civil rights are impacted, Smith held eighteen years later that the door to litigation in this area is not closed. Smith, concerning whether religious exceptions existed to Oregon's criminal laws permitting native Americans to use peyote in religious rituals, held that the state could regulate the "free exercise" of religion so long as it did not intentionally burden, discourage or prohibit it. Writing for the majority, Justice Scalia argued that granting free exercise exceptions from generally applicable laws would have the negative effect of allowing contempt for civil rights laws:

> The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind - ranging from compulsory military service to laws providing equal opportunity the races.

Demonstrating the absurdity to which unchecked religious exemptions might be taken, Reynolds v US, 98 US 145 (1878), a Mormon polygamy case, held that government need only a rational basis for prohibiting conduct, regardless of the religious basis for it, since courts can distinguish between impermissible government regulation of belief versus permissible regulation of actions. Justice Black relied in part of Thomas Jefferson's "Letter to Danbury Baptist Association" which said:

> ...the legislative powers of the government reach actions only , and not opinions...man has no natural right in opposition to his social duties...

Black ruled that Congress was free to reach actions that were in violation of social duties or subversive of good order:

> Laws are made for the government of actions...and while they cannot interfere with mere religious beliefs and opinions, they may with actions...could any serious objection be made against government interference with religiously motivated human sacrifices, or a wife's duty to burn herself upon the funeral pile of her deceased husband ...(To permit such religious exceptions) would make the professed doctrines of religious belief superior to the law of the land, and in effect permit every citizen (or church, my addition) to become a law unto himself.

While many Title VII suits alleging employment discrimination by religious institutions fail due to "free exercise clause exceptions, the clause does always require inquiry into the sincerity of the institution's religious beliefs which justify the exception. Courts historically permit exceptions to generally applicable employment laws only where the challenged prac-

tice is supported, compelled, or motivated by sincerely held religious belief. It is important to note that incidental impacts on religious practices or beliefs of adherents have been held to be outweighed by the government's **compelling** interest in ending employment discrimination. See EEOC v Freemont Christian School, 781 F.2d 1362 (9th Cir.1996). It is clear on Father Rweyemamu's facts and by the policies of the Catholic church, infra, that those who would frustrate Father Rweyemamu's career in the priesthood based on his race, color, alienage or national origin cannot sincerely hold those beliefs as Catholics, and thus not in any relationship between a bishop and priests, making religious exceptions to anti-employment discrimination laws irrelevant to Catholic practice and anti-discrimination suits by priests against the Catholic church.

Finally, many renowned legal scholars dispute the legitima- cy of religious exceptions of any kind from anti-employment discrimination laws. Best known may be William B. Marshall, who argues that government is constitutionally forbidden from showing preference for any religion, and that US Constitution rights to free speech and "free exercise" should be evaluated similarly.

Government should not be in the business of subjectively evaluating the sincerity and religiosity of exception claims, since it violates the principle that all ideas are equal in the "idea marketplace", and requires judicial legitimization of religious belief. Jane Rutherford argues that equality is the highest constitutional value and government interests in eliminating employment discrimination outweigh religious autonomy. Religious employees are no less entitled to government protection from employment discrimination than others. Ira Lupa argues that Jones v Walt, 443 US 595 (1995) stands for the idea that courts are authorized to resolve church

disputes as long as the court is not required to resolve a religious controversy. Employment disputes are not internal ecclesiastical matters, but do involve substantial public and third party interests. "Free exercise" rights are individual rights, not group rights, so churches have no right to assert them as organizations. "Free exercise" rights are based on sincere religious belief of individuals, where organizations cannot hold individual convictions, make spiritual commitments, or demonstrate sincerity, thus they cannot qualify for "free exercise" exceptions.

Of course, Americans fought a civil war to free African slaves from pre-war economic and social servitude and oppression, and the US Constitution Fourteenth Amendment was ratified shortly thereafter specifically to protect the civil rights of former slaves. The Amendment was designed to guarantee that states not arbitrarily deny rights and protections to anyone in their jurisdiction. Due process limits interference with personal rights, and should strongly do so when, as Catholic doctrine warns against, discrimination is advanced for religious reasons. Fourteenth Amendment equal protection rights prohibit states from selective enforcement of laws. Father Justinian Rweyemamu came to Connecticut over ten years ago from Tanzania, East Africa, assuming he could rely on the usual benevolence of the Roman Catholic Church here. Instead, he has been deceived by a diocese that not only fails to support his best interests and its own anti-discrimination laws and beliefs, but like so many Africans brought to America by slave traders and owners decades ago, is expected by his diocese to suffer silently for years, working for his Norwich diocesan masters without the slightest prospect of earned promotions, or, as CHRO would have it, even the most basic protections of state and EEOC administered laws compelling investigations and hearings regarding witnessed and otherwise evidenced

allegations of race, color, national origin and alienage-based employment discrimination.

For all of the foregoing legal reasons of jurisdiction satisfaction, Canon, secular and caselaw argument, and state and US civil rights law history and policy, justice demands that the CHRO investigate and hear this case.

Thank you for your attention. I look forward to your reply.

Sincerely,

Attorney Harold H. Burbank, II

cc: Father Rweyemamu

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No.

Father Justinian Rweyemamu	Superior Court
Plaintiff-Appellant	
v.	Judicial District of New Britain At New Britain
Connecticut Commission on Human Rights and Opportunities, and Diocese of Norwich	
Respondents-Appellees	April 25, 2005

Revised Complaint of Appeal of Administrative Agency Decision To Superior Court Pursuant To Con.Gen.Stat. Section 4-183

Now comes the Plaintiff- Appellant Father Justinian Rweyemamu by his undersigned counsel and pursuant to Con.Gen.State. Section 4-183 complains against the Respondent, Connecticut Commission on Human Rights and Opportunities, as follows:

Parties

1. Appellant is an individual living in Rockville, Connecticut.

2. Appellee Connecticut Commission on Human Rights and Opportunities is a Connecticut agency with its principal office in Hartford, Connecticut.

3. Appellee Diocese of Norwich is a division of the Catholic

Church with offices in Norwich, Connecticut, and employs over fifteen people.

Count 1

4. The record establishes that Appellee CCHRO is responsible for administering cases concerning the Connecticut Discriminatory Employment Practices Act; Conn.Gen.Stat. Sec.46a-60.

5. It is undisputed that Appellee CCHRO did not apply the Act to the facts of this case, evidenced by its "Notice of Draft Finding" and "Notice of Final Agency Action", nor consider the impact of the Act in light of Employment Division v. Smith, 494 US 872 (1990).

6. This CCHRO failure constitutes clear error and abuse of discretion.

Count II

7. Appellant asserts that "generally applicable laws" discussed in Smith, infra, which should not go unenforced due to constitutional "free exercise" exceptions include all of the state and US constitutional standards designed to prevent discriminatory employment practices. Such constitutional protections which the CCHRO failed to apply in Appellants case include:

a) The Connecticut Constitution Preamble:
The People of Connecticut, acknowledging with gratitude, the good providence of God.in having permitted them to enjoy a free government; do, in order more effectually to define, secure, and perpetuate the liberties, rights and privileges which they have derived from their ancestors: hereby after a careful consideration and revision, ordain and establish the following constitution and form of civil

government.

b) Connecticut Constitution Article First, Declaration of Rights: That the great and essential principles of liberty and free government may be recognized and established, WE DECLARE: Sec. 1. All men when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive public emoluments or privileges from the community (emphasis added).

c) Connecticut Constitution Amendments Article V: Equal Protection. No segregation: No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin or sex.

d) US Constitution Preamble: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.

e) US Constitution Article IV, Section 2: The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several states.

f) US Constitution Amendments Article V: No person shall...be deprived of life, liberty or property without due process of law...

g) US Constitution Amendments Article IX: Rights retained

by the people: The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

h) US Constitution Amendments Article X; Powers not delegated to the United States: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

i) US Constitution Amendments Article XIV; Citizenship defined; Privileges of Citizens; Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce (emphasis added) any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person within its jurisdiction the equal protection of the laws.

8. The record reflects that the CCHRO did not consider the case in light of any constitutional principal or doctrine, save the "ministerial exception", which has not been held by any state court to be the law of Connecticut nor by the US Supreme Court to be the law of the United States.

9. The record reflects that the CCHRO did not consider what the losses of these constitutional rights would mean to Appellant where Smith specifically cautioned against the loss of constitutional and other rights in cases like this one concerning laws protecting the equality of the races.

10. CCHRO's failure to make this analysis and secure for Appellant his state and federal constitutional rights precluding

race discrimination was error and an abuse of discretion.

Relief Requested

Wherefore, Appellant prays the court to enter a judgment:

a) Vacating the CCHRO's dismissal.

b) Finding jurisdiction under state anti-employment discrimination statutes

c) Finding jurisdiction under Employment Division v Smith, infra.

d) Finding jurisdiction under applicable state and federal constitutional doctrines.

e) Finding that Appellant has met his burden of proof to sue his employer in state and federal courts.

f) Ordering CCHRO to issue Appellant a "right to sue" letter.

g) Ordering relief the court finds equitable and just.

Oral Argument Requested

11. Pursuant to Conn.Gen.Stat. Section 4-183(I), Appellant requests leave to brief case issues and oral argument.

Dated: April 25, 2005

Respectfully submitted.

Attorney Harold H. Burbank, II
Juris # 409239
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860-693-0600
For Appellant Father Justinian Rweyemamu

DN CV-05-4003388-S	:	Superior Court
Father Justinian Rweyemamu Plaintiff-Appellant	:	JD of New Britain At New Britain
v.	:	
Connecticut Commission on Human Rights And Opportunities et al Respondents-Appellees	:	April 10, 2005

Appellant's Brief

Oral Argument Requested

Appearance:

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Statement of Issues

1. Does CCHRO's dismissal, based on a foreign case law "ministerial exception" argued to preclude CCHRO jurisdiction, of a black African Catholic priest's race, color,

ethnicity and national origin-based employment discrimination claim against his Diocese exceed CCHRO authority, voiding its decision?

2. Does a black African Catholic Priest have a state human right to CCHRO and state court jurisdiction of his race, color, ethnicity and national origin-based employment discrimination complaint?

(2)

Statement of Facts

On September 15 , 2004, the plaintiff, a black African Catholic priest (and a naturalized US citizen since 2004) filed a race, color, ethnicity and national origin-based employment discrimination complaint with CCHRO versus his employer, the Diocese of Norwich, Connecticut, alleging that despite over ten years of solid work performance as a parochial vicar, he was never interviewed for or promoted to the position of pastor, the next logical step of his priesthood career. He alleged that in April, 2004 the diocese promoted a white lay deacon, with no qualifications as a priest, to the position of parish administrator, with supervisory authority over him, in violation of church law. He alleged that when he filed the appropriate church law
complaint with the diocese the bishop terminated the deacon, and recalled two retired white
priests into service until a younger white priest was hired. He also alleged that he was passed over for jobs applied for in August, 2004 for which younger, less experienced white priests were hired.

On October 4, 2004, CCHRO issued a "Notice of Draft Finding of No Reasonable Cause -Lack of Jurisdiction" notice to the Appellant because his complaint:

...fails to allege facts sufficient enough to constitute a violation of the state's Discriminatory Practice Act. Specifically, the Complainant is a Roman Catholic Priest. The courts and the Commission recognize a "ministerial exception" with respect to individuals employed by religious institutions in a clergy or ministerial capacity. The Commission and the courts have determined that such are the "lifeblood" of the church, and any government interference between a church and its ministers would violate the First Amendment to the Constitution...you and/or your attorney have the right to provide written or oral comments...within 15 days. CCHRO regional manager James Flynn letter dated October 4, 2004.

On October 19, 2004 the Appellant exercised his right to comment on the draft finding by faxing to CCHRO, care of Mr. Flynn, an eight page, single spaced narrative on the Appellant's legal research arguing what must have been the only possible legal basis for CCHRO's October 4, 2004 letter, as that letter supplied no legal basis. The narrative said that CCHRO had committed "malfeasance" of its duties to investigate and defend his Connecticut human rights by failing to begin investigations and due process hearings of his Connecticut human rights law-based claims, and by finding that CCHRO had no jurisdiction based on a "ministerial exception" which appears in no Connecticut human rights or any other statute, has never been ruled to be the law of Connecticut by any state or federal court, has never been ruled to be the law of the United States by any federal agency or court; was first articulated in McClure v Salvation Army, a 1972 federal 5th Circuit Court of Appeals case concerning employees of the Georgia Salvation Army; has

since been followed in less than a majority of the federal

appeals court districts; and has never been followed in the Second Circuit. The narrative also gave the CCHRO an overview of Catholic canon law and policy precluding racism of any kind and citations to Church doctrines compelling secular intervention to preclude Church racism, especially when it appears in the guise of religious freedom.

On December 1, 2004 the CCHRO, over James Flynn's signature, issued to the Appellant a "Notice of Final Agency Action, No Reasonable Cause/Administrative Dismissal", again citing a "ministerial exception" that CCHRO "recognized". Both the "Notice of Draft Finding" and "Noitce of Final Agency Action" failed to cite any agency regulation, statute, or state or federal case authorizing or supporting the dismissal, or anything to do with a "ministerial exception", other than CCHRO's "recognition" of the exception. The December 1, 2004 notice stated the Appellant's rights to agency reconsideration of the disposition and right of Superior Court appeal, stressing that an appeal "...must strictly comply with all of the applicable statutory procedures, requirements and time frames.". By April 25, 2005, Appellant had filed a timely state superior court appeal and a revised appeal of CCHRO's December 1, 2004 dismissal.

Argument

I. CCHRO'S DISMISSAL OF A BLACK AFRICAN CATHOLIC PRIEST'S RACE, COLOR, ETHNICITY AND NATIONAL ORIGIN-BASED EMPLOYMENT DISCRIMINATION COMPLAINT AGAINST HIS CATHOLIC DIOCESE EXCEEDED CCHRO AUTHORITY AND IS VOID WHERE DISMISSAL WAS PREMISED ON A FOREIGN CASE LAW "MINISTERIAL EXCEPTION" THAT CCHRO ARGUED PRECLUDED ITS JURISDICTION.

CCHRO's October 4, 2004 "draft finding" and its December 1, 2004 "notice of final agency action" dismissing Appellant's employment discrimination case contained no legal basis for that decision save CCHRO "recognition" of a "ministerial exception" to Connecticut's laws precluding employment discrimination based on race, color, ethnicity or national origin, which the legislature commanded CCHRO to uphold and defend. See CGS Sec. 46a-51 et seq; The Fair Employment Practices Act. The reason CCHRO could not offer a legal basis except its own "recognition" of this "exception" clearly was that the Connecticut legislature, the only authority empowered to make exceptions to state statutes, has never passed a "ministerial exception" to Connecticut's anti-employment discrimination laws, or any other laws, nor granted any agency power to unilaterally "recognize" a "ministerial exception". State and federal case law and legal scholars have made it clear that agencies that "recognize" non-statutory exceptions of any kind or expand their statutory powers in any way not specifically delegated to them by the legislature

exceed their authority, making all agency decisions based on such "recognized" exceptions or other self-appointed powers void at law.

Modern legal treatises caution state agencies against adopting "exceptions" that do not exist in duly passed statutes:

> An administrative agency may not arrogate to itself powers vested exclusively in the legislative branch by the state constitution. An attempt on the part of an administrative agency to exercise powers beyond the scope of it delegated powers is a usurpation of legislative authority and is ineffective. Accordingly, administrative bodies may not exercise the power to enact, amend, or repeal

laws. Administrative officers may not supply omissions in, or enlarge the scope of, a state statute by reading into it language intended to correct a perceived defect, or extend, restrict, or disregard the requirements of a statute, nor may an agency write special exceptions into a statute so as to make it inapplicable under certain conditions not mentioned in the statute (emphasis added). See also Texas Workers v Continental Casualty, 83 SW 3rd 901, 908, (Tex.App., Eastland 2002)("A court [or an agency] may not write special exceptions into a statute so as to make it inapplicable under certain circumstances not mentioned in the statute.) CJS, Public and Administrative Law and Procedure, Volume 70, pp. 227-29 (2004).

Clearly the Connecticut Supreme Court has adopted these principles, and applies them to the courts, even though they *do* have considerable authority to interpret and apply statutes:

> ...in the absence of ambiguity, courts cannot read into statutes, by construction, provisions which are not clearly stated...Moreover, courts should not imply exceptions to a statute (emphasis added) over which the legislature did not prescribe by word or implication. Caulkins v Petrillo, 200 Conn 713, 718-19 (1986), citing Haves v Smith, 194 Conn. 52 (1984) and Sienkiewicz v Sienkiewicz, 178 Conn. 675, 687-88 (1979).

See also Consumer Counsel v DPUC, 44 Conn.Supp. 21, 29 (1994): "Where there is no ambiguity in the legislative commandment, this court cannot, in the interest of public policy, engraft amendments onto the statutory language...Nor is it the prerogative of an administrative agency to do so.": Glastonbury v FOIC, 39 Conn.Supp. 257, 263 (1984): "If courts do not have authority to substitute their own ideas of

what might be a wise provision in place of a clear expression of legislative will...then neither do administrative agencies.";

(5)

In re Michaela Lee R, 253 Conn 570, 595 (2000): "...an administrative body must act strictly within its statutory authority...It cannot modify, abridge, or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power"; and Marone v Waterbury, 244 Conn 1 (1998): "It is clear that an administrative body must act strictly within its statutory authority, within its constitutional limitations and in a lawful manner.", citing Waterbury v CHRO, 160 Conn.226 (1971).

Where agencies have no powers to "recognize" exceptions to statutes unless they are adopted by the legislature, state courts and the federal Second Circuit Court of Appeals have rightly ruled that agency decisions made pursuant to illegal statutory exceptions are null and void:

> The plain meaning of the statute, the scant legislative history, and the statute's apparent purpose all indicate that the Connecticut tax commissioner lacked authority to grant an exemption...since the commissioner's grant of the exemption was not within his statutory authority, his original decision was a nullity (emphasis added). Connecticut Performing Arts Foundation v Brown, 801 F.2d 566, 569 (2nd Cir.1986).

and:

> Administrative agencies are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of statutes vesting them with power and they cannot confer jurisdiction on themselves...(it) can act only within the bounds

of authority granted to it by its enabling statute and within constitutional limitations. It is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority...When an administrative agency takes action that exceeds it authority, that action is void (emphasis added). NelsecoNavigation Co. v. DLC, 27 Conn.App. 614, 620 (1992).

As the state constitution commands under the doctrine of separation of powers, the legislature and the courts are jealous of their roles to pass and interpret, respectively, the laws of Connecticut, and both branches rightfully guard their prerogatives vigorously against state agency encroachment. These rights and duties of the legislature and courts to uphold their constitutional mandates are well illustrated in state case law opposing agency encroachments.

The Connecticut Supreme Court has sharply criticized agencies seeking to expand their powers at the expense of the legislature under the guise of rule-making type powers not specifically granted to them by statute.. In Salmon Brook Convalescent Home v Commission on Hospitals, 177 Conn 356 (1979), an agency argued that its "guidelines" not passed into law by formal rule-making procedures commanded by the UAPA were not illegal because the test of legality was not "guidelines" existence, but how they are used. The court disagreed:

> The power of an administrative agency to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute...The nature and impact of these "regulations" characterized as "guidelines" required that the commission's

> legislative authority exercised under them be done only after conforming with the UAPA...There is no warrant for the agency to replace the statutory scheme with rule-making procedures of its own invention. Salmon Brook at 363, 367.

Appellant's case is easily analogized to Salmon Brook. CCHRO clearly did not state a properly promulgated rule on which it dismissed Appellant's complaint, but rather claimed a "ministerial exception" that it and no other state legislative or state or federal judicial authority has "recognized" as applicable to Connecticut law, and applied to deny Appellant jurisdiction of his claim. Salmon Brook disparaged such acts by describing similar malfeasance it reviewed in ruling against the state hospital commission:

> In nullifying the commissioner's determination, which employed the "guideline", the court pointed out that the record disclosed that the petitioner's application "was denied not on the basis of the commissioner's review of the facts and merits of her application, but on the basis of applying to her application a preset, rigid, numerical policy (not contained in the statute) which foredoomed the application. Salmon Brook at 367.

The Appellant's complaint was not reviewed on the merits, and was foredoomed by an assumed agency "recognition" power to create a "ministerial exception" not existing in any state statute, nor promulgated by any lawful state procedure (ie under the UAPA), nor judged applicable by any state or federal court impacting Connecticut law, thus illegally usurping the legislature's intent that CCHRO take jurisdiction of the Appellant's case under Connecticut's Fair Employment Practices Act. This cannot stand where the state Supreme Court has specifically held that agency jurisdiction is

completely set by statute:

> A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation...Because of the statutory nature of our workers' compensation system, policy determinations as to what injuries are compensable and what jurisdictional limitations apply thereto are for the legislature, not the judiciary or the board...Del Toro v Stamford, 270 Conn. 532 (2004).

Many state cases likewise hold that agencies shall not encroach upon the legislature:

> "The authority of the administrative body acting under such grant of power, is limited to the making of reasonable rules and regulations within the scope of power granted...and cannot be extended to amending or adding to the requirements of the statute...", Oles v LCC, 10 Conn.Supp. 489, 492-3 (1942); "The court shall affirm the decision of the agency *unless* the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: 1) In violation of constitutional or statutory provisions; 2) in excess of the statutory authority of the agency; 3) made upon unlawful procedure; 4) affected by other error of law; 5)clearly erroneous in view of the...whole record; or 6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted abuse of discretion. If the court finds such prejudice it shall sustain the appeal...", Beizer v Dept. of Labor, 5 Conn.App.347 (2000).

The courts have also ruled forcefully against agency usurpations of court powers, particularly on "pure questions of

law" rather than fact or duly passed regulations. Courts are adamant that agencies are entitled to no deference when they are asked to rule on pure questions of law, and that court powers to review such questions are plenary, especially in cases when a construction of a statute is reviewed for the first time:

> Cases that present pure questions of law...invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion...We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of the statute...has not been previously subjected to judicial scrutiny (or to) ...a governmental agencies time tested interpretation. Schiano v Bliss Exterminating, 260 Conn 21, 34 (2002).

See also Davis v. FOIC, 47 Conn.Supp. 309 (2002): "...when a state agency's determination of a question of law has not previously been subject to judicial scrutiny...the agency is not entitled to a special deference...It is for the courts, and not administrative agencies, to expound and apply governing principles of law.", at p. 314. The Davis holding appears to have followed Skindzier v Commissioner, 258 Conn 642, 647 (2001), and Wood v Zoning Board, 258 Conn. 691, 698 (2001), which contained exactly the same language quoted for Davis. Davis was arguably premised on Church Homes v. Administrator: "...we must determine 'whether the administrative action resulted in an incorrect application of the

law to the facts found or could not reasonably or logically have followed from such facts...(the court) retains the ultimate obligation to determine whether the administrative action was

unreasonable, arbitrary, illegal or an abuse of discretion." Church Homes v Administrator, 250 Conn. 297 (1999). All of these cases clearly stated the courts' right and duty to review the legality of agency rulings of law, particularly on questions of pure law, where, as here, an agency (CCHRO) has at best interpreted its powers to include a right to "recognize" and apply exceptions to lawfully passed statutes without the slightest deference to legislatively mandated administrative procedures (UAPA) or cognizance that the courts, not agencies, ultimately determine all issues of law, especially where, as here, an agency alleges a unique, ostensibly statutory authority to "recognize" a "ministerial exception" for the first time.

At least one Connecticut federal court has ruled that the applicability of a "ministerial exception" is a question of law for courts only. The Diocese of Norwich recognized this legal fact by submitting Musante v. Notre Dame, No. 3:01CV2352 (MRK) (D.Conn. Mar.30, 2004) for Appellant's review. Musante concerned whether Notre Dame of Easton Church committed employment discrimination against a 76 year old female church teacher and administrator in violation of the federal Age Discrimination in Employment Act (ADEA) and specifically ruled that the such applicability was a legal question for courts only: "The applicability of the ministerial exception is a question of law for the court." Musante at 4.

There is no holding in Musante granting agency authority to "recognize" a "ministerial exception", and no holding applying the "exception" to Connecticut laws. Indeed it appears from materials submitted to the Appellant by the Norwich Diocese that Musante is the only Connecticut case of any kind to consider a "ministerial exception" to any laws impacting Connecticut, and after a diligent search the Appellant cannot find another such Connecticut case. Musante did not set or cite

any federal mandates for applying a federally imposed "ministerial exception" in Connecticut, nor did it hold that all federal jurisdictions must apply it, and in fact took pains to note that the Second Circuit has not ruled on the issue: "The Second Circuit does not seem to have directly considered the ministerial exception..." Musante at 5. It did find that the proper review standard where the case was one of first impression was that courts (not agencies whose rights to apply a "ministerial exception Musante did not discuss at all) have a duty to consider the "totality of the circumstances" before imposing a ministerial exception on ostensible US constitutional grounds. Musante at 6. CCHRO clearly did not even consider Appellant's basic claims let alone the "totality of circumstances"of his complex case before it assumed unlawful "ministerial exception" authority to preclude its jurisdiction of Appellant's claims. CCHRO surely did not consider, as Appellant argued in its October 19, 2004 comments to it, that in view of all of the circumstances of his case, and under dictates established by the US Supreme Court in Employment Division v Smith, 494 US 872 (1990), the only US Supreme Court case to directly address alleged First Amendment "free exercise" religious exceptions to generally applicable laws,

holding precisely that such exceptions illegally threaten laws protecting "equal opportunity for the races", that the Appellant rather than his diocesan employer holds the higher constitutional ground by arguing for freedom *from* an unlawful, unconstitutional "ministerial exception" to Connecticut's employment discrimination laws designed to protect all state citizens under state statutes, and the state and the federal constitutions.

Schiano, *infra*, clearly illustrated the limits of agency powers and the great breadth of judicial review even when an

agency *has* cited a statute properly within its authority on which to make a decision or deny jurisdiction, indicating that the courts have even broader review powers, as in Appellant's case, when the agency has based its decision on assumed authority. Connecticut's federal courts have ruled that "...a reviewing court must be certain that an agency has considered all of the important aspects of the issue and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." Community Health Center v. Wilson-Coker, 175 F.Supp.332 (D.Conn 2001), and clearly when an agency, as in the instant case, has failed to even apply the laws of its mandate, and excused itself from so doing by creating a bogus "exception" to its jurisdictional authority, it invites considerable court scrutiny to explain itself. This broad mandate of court independence and duty to review malfeasant agencies goes back in state case law to at least 1958, when in Mills v Town Planning Commission, 145 Conn. 237 (1958) the Connecticut Supreme Court held: "Upon appeal, a court can grant relief where the local authority has acted illegally or arbitrarily, and has clearly abused the discretion vested in it." Id at 242.

Considerable additional authority exists to support court review of agency decisions of law. "Where the administrative agency has made a factual determination, the scope of review ordinarily is expressed in such terms as substantial evidence... Where, however, the administrative agency has made a legal determination, the scope of review is ordinarily plenary." Quarry Knoll II v Planning and Zoning Commission, 256 Conn. 674, 721 (2001). "A reviewing court, however, is not required to defer to an improper application of the law...'the construction and interpretation of a statute is a question of law for the courts, where the administrative decision is not entitled to special deference...Because this case forces us to examine a

question of law, namely, the construction and interpretation of Sec. 1-210(b)(2) as well as the standard to be applied, our review is de novo." Director v FOIC, 256 Conn.764, 771-2 (2001). "...a decision of an administrative agency cannot be 'set aside on the sole ground that it is erroneous as a matter of law, except by a court exercising appellate or revisory jurisdiction, unless authorized by statute, or unless the error is one going to the jurisdiction." Liano v Bridgeport, 55 Conn.App. 75, 83 (1999). Clearly the Connecticut Superior Court, sitting as a court of appeals of a CCHRO decision, has the authority to overrule CHHRO's dismissal on jurisdiction grounds of Appellant's case and remand it for proper review.

CCHRO undisputedly lacked the legislative, statutory, and constitutional authority to "recognize" a "ministerial exception" to Appellant's complaint and dismiss it thereon.

The dismissal was clearly erroneous as a matter of law and an abuse of discretion, compelling the court to void the dismissal, and at the least remand the case for a full investigation and lawful administration.

II. A BLACK AFRICAN CATHOLIC PRIEST HAS A CONNECTICUT HUMAN RIGHT TO CCHRO AND STATE COURT JURISDICTION OF HIS RACE, COLOR, ETHNICITY AND NATIONAL ORIGIN -BASED EMPLOYMENT DISCRIMINATION COMPLAINT.

Appellant attempted to persuade CCHRO in his October 19, 2004 "comments" on CCHRO's October 4, 2004 "draf decision" that the law of "ministerial exceptions" is unsettled at best and clearly has not been applied in any Connecticut agency or state court decision. This history reflects the fact that the US Supreme Court and the Second Circuit have not ruled directly

on the issue, and only one Connecticut federal court has ruled in circumstances compellingly different from those of the Appellant. See Employment Division v. Smith, 494 US 872 (1990) and Musante v Notre Dame, *infra*. On these facts the courts must consider the entire panoply of rights and laws at issue for all parties, and from the Appellant's perspective whether Connecticut offers higher and different protections for employment discrimination complainants than those indicated in Musante, *infra*.

Musante concerned whether a ministerial exception existed to a federal age discrimination statute, based on a theory that such an exception was compelled by the "free exercise" clause of the US Constitution First Amendment. Musante was a white, female, US-born teacher and religious education administrator. She was not, like the Appellant, an ordained priest from Africa, trained in church doctrine and bound by it and faith to vigilantly bear witness to the highest commandments of the church at all times, even against church superiors and employers. His CCHRO complaint flowed from facts of being passed over for promotion in favor of a white male church member (deacon) with no Vatican authority to preside over Catholic services, who was dismissed from that position and replaced with retired white priests when the Appellant complained to his bishop-supervisor. There is no question that the Appellant is a minster in the context of the "exception" contemplated in Musante, that the fact of his priesthood caused his bishop to recant his order placing a deacon in a superior employment position to the Appellant, and thatthis fact pattern differs significantly from Musante for these and other reasons.

Such distinctions cry out for the "totality of the circumstances" analysis called for in Musante for cases of first impression, including a review of how the federal "ministerial

exception" evolved and whether it must apply to all states, including Connecticut. This must begin, as Appellant argued to CCHRO on October 19, 2004, with a discussion of McClure v SalvationArmy, 460 F.2d 553, (5th Cir.1972), in which

CCHRO found the "lifeblood of the church" language of Appellant's dismissal and the first federal ruling on a "ministerial exception". Appellant argued to CCHRO that McClure was not a dispositive Connecticut case because it was not a US Supreme Court case, nor a Second Circuit case, and that the US Supreme Court refused cert because the plaintiff failed to appeal the case on time, not because it supports a "ministerial exception" to any state or federal anti-employment discrimination laws. McClure was a sex discrimination case, which held specifically:

> The language and the legislative history of Section 702 (of Title VII) compel the conclusion that Congress did not intend that a religious organization be exempted from liability for discriminating against its employees on the basis of race, color, sex or national origin...McClure at Section I.

McClure was based in part on Gonzalez v. Roman Catholic Archbishop, 280 US 1 (1929), which held in pertinent part:

> In the absence of fraud, collusion or arbitrariness, the decisions of proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Appellant made strong allegations of employer fraud, collusion and in mistake in his CCHRO complaint, and was denied a review of them due to application of the ministerial exception.

McClure was also based in part on Watson V Jones, 80 US 679 (1871), for the principle that:

> ...whenever the questions of discipline, or of faith or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunal must accept these decisions as final, and as binding on them.

At the time of his CCHRO complaint the Appellant had appealed to the highest church judicatories in Rome with as yet no decision, and pled this in his CCHRO complaint, yet CCHRO denied him jurisdiction based on a "ministerial exception".

Considering the "totality of the circumstances" on which McClure fashioned its "ministerial exception, and the totality of circumstances underpinning Appellant's CCHRO complaint, it is far from clear that the ministerial exception must or even should apply under US and Connecticut law. This is especially significant in view of Connecticut constitutional authority cited in Appellant's Complaint of Appeal to this court defending his state human rights, including

his rights to be free of employment discrimination by religious employers:

> All men, when they form a social compact, are equal in rights, and that no man or set of men are entitled to exclusive public emoluments or privileges from the community. Constitution Article First, Declaration of Rights, Section 1.

> No person shall be denied equal protection of the laws nor be subjected to segregation or discrimination in the exercise or

enjoyment of his or her civil or political rights because of his race, color, ancestry, national origin or sex. Connecticut Constitution Amendments Article V: Equal Protection.

Certainly it is a well established principle of constitutional law that all standards allegedly set for the federal constitution are mere baselines for the states, and that states shall always have rights to establish higher standards of human rights and other laws under their own constitutions and statutes. Surely the Connecticut Constitution has made clear that Connecticut has historically intended to apply the highest possible protections of its constitutional and human rights prerogatives to all of its citizens, precluding "exclusive emoluments or privileges form the community". Clearly applying a "ministerial exception" to our human rights law does precisely what Connecticut's constitution forbids by exposing black, African Catholic priests to the whims of a private religious employer who might dare to disregard Connecticut's anti-employment discrimination laws. Connecticut's constitution thus arguably provides greater anti-employment discrimination protections than those yet judged by the federal courts as applicable under the US Constitution to some federal cases.

For these reasons and more CCHRO's dismissal for lack of jurisdiction of Appellant'semployment discrimination complaint was clear error and an abuse of discretion.

Conclusion

For the foregoing reasons the Court should void and overrule CCHRO's dismissal of Appellant's complaint and remand the case for invetsigation and administration under state employment discrimination statutes; or alternatively find that CCHRO exceeded its authority by claiming a "ministerial

exception" to its duties to accept jurisdiction of Appellant`s case. find that CCHRO has jurisdiction and that failure to so rule was clearly erroneous and an abuse of discretion. and find that failure to exercise its jurisdiction has prejudiced the Appellant`s case for timely CCHRO review and order CCHRO to release the Appellant from CCHRO jurisdiction by issuing a "right to sue" letter so he may pursue his case

in courts of his choosing.

Respectfully submitted this 10th day of June. 2005.

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STATE OF CONNECTICUT
APPELLATE COURT

AC 27108

JUSTINIAN RWEYEMAMU

V.

CONNECTICUT COMMISSION ON
HUMAN RIGHTS AND OPPORTUNITIES ET AL

BRIEF OF THE PLAINTIFF-APPELLANT

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Statement of Issues

1. Is the "ministerial exception doctrine" the subject matter jurisdiction law of Connecticut clergy-church employment discrimination lawsuits? See brief pages 3 to 6.
2. Did the court err in finding that it is bound by a federal common law "ministerial exception" regarding state law based anti-discrimination claims, thus permitting the Appellate Court to order CHRO to issue a right to sue letter the plaintiff? See brief pages 6 to 11.

Statement of Facts

The plaintiff, a black, Tanzania, Africa ordained Catholic priest (a naturalized US citizen since 2004), recruited to the United States from Tanzania by a Massachusetts diocese to meet a priest labor shortage there, and then recruited by the Diocese of Norwich, Connecticut to meet a similar priest labor shortage there, filed a September 15, 2004 CHRO employment discrimination complaint versus his Connecticut employer, the Diocese of Norwich, Connecticut and St. Bernard's Parish, Rockville, Connecticut, alleging race, color, ethnicity and national origin employment discrimination, where despite ten years of flawless service to the Diocese and five years of flawless service to the parish as a parochial vicar, he was not noticed, interviewed or promoted for the open positions of St. Bernard's parish administrator or pastor, logical steps in the plaintiff's church career, and a white lay deacon, with no religious authority to perform religious functions, was hired as parish administrator, with supervisory authority over the plaintiff. When he filed a church law (canon law) complaint with his bishop, the bishopterminated the deacon, and hired in succession two retired white priests for the vacancy until it

was filled by a younger white priest. The CHRO complaint also alleged that the plaintiff was passed over for priest jobs applied for in August, 2004, for which younger, less experienced white priests were hired.

On October 4, 2004, CHRO issued a "lack of jurisdiction" notice to the plaintiff, which stated that he:

> ...fails to allege facts sufficient enough to constitute a violation of the state's Discriminatory Practice Act. Specifically...the courts and the Commission recognize a "ministerial exception" with respect to individuals employed by religious institutions in a clergy or ministerial capacity...government interference between a church and its ministers would violate the First Amendment to the Constitution...

On October 14, 2004 the plaintiff noticed CHRO of his objections and comments to the CHRO judgment, stressing the lack of any Connecticut or federally mandated ministerial exception to generally applicable state or federal antidiscrimination laws, and that any such common law concept clearly had not been even recognized, let alone followed, in any state or federal Connecticut court or agency before , nor in the US Second Circuit Court of Appeals, nor in the US Supreme Court. The plaintiff's notice also described unequivocally binding church canon law and policy precluding racism of any kind, with specific citations commanding secular intervention to preclude church and other racism, especially when it appears in the guise of religious freedom.

On December 1, 2004, CHRO issued a final notice of dismissal, again citing a ministerial exception that CHRO

"recognized". Then CHRO "notice of draft finding" and "notice of final agency action" failed to cite any state or federal regulation, statute, or case supporting its decision.

(3)

The plaintiff made timely appeal to the Superior Court, arguing 1) CHRO's dismissal exceeded its authority and was void where it was based on a common law ministerial exception and; 2) Black African priests have state human rights, grounded in state anti-discrimination statutes, the state constitution, and the federal case law foundation of the so called federal ministerial exception to anti-discrimination laws, to CHRO and court jurisdiction of their anti-employment discrimination claims. On October 19, 2005, the court upheld CHRO, finding subject matter jurisdiction was barred by the US Constitution free exercise clause.

This appeal followed.

Argument

1. FEDERAL ANTI-DISCRIMINATION STATUTES WERE AMENDED BY THE RELIGIOUS FREEDOM RESTORATION ACT (RFRA), DISPLACING THE MINISTERIAL EXCEPTION DEFENSE TO FEDERAL ANTI-DISCRIMINATION CLAIMS, PRECLUDING DISMISSAL OF THE PLAINTIFF'S CASE.

On February 16, 2006, the US Second Circuit Court of Appeals ruled on Hankins v Lyght, US App. Lexis 3789 (2nd Cir. 2006), where John Paul Hankins, a 70 year old Methodist minister, appealed a New York federal district court dismissal of his Age Discrimination in Employment Act of 1967 (ADEA: 42 USC Sec. 2000bb et seq) suit versus his bishop, Ernest S. Lyght, and the New York Annual Conference (NYAC) of the

United Methodist Church, which had jointly and severally terminated Hankins under an alleged mandatory retirement policy compelling ministers to retire at age 70. The policy was founded by the Methodist Church's Council of Bishops, recorded in the Methodist Book of Discipline, and in Hankins' case implemented by Bishop Lyght.

(4)

Bishop Lyght argued on appeal that Congress passed the Religious Freedom Restoration Act (RFRA) for the very reason that applying the ADEA to clergy-church relations would substantially burden religion. Following this logic, the court held that the RFRA is constitutional as applied to federal law, that it amended the ADEA, and that it governed Hankins case. The dismissal was thus vacated and the case remanded for determination of whether application of the ADEA to Hankins' case against the NYAC and Bishop Lyght violated the RFRA.

The court specifically addressed the "ministerial exception" on which the trial court dismissed Hankins' complaint, making clear that the exception no longer impacts Connecticut state or federal law:

> The district court dismissed the case based on a "ministerial exception" that some courts had read into various anti-discrimination laws - an unresolved issue in this circuit - including the ADEA. Whatever the merits of that exception as statutory interpretation or policy, it has no basis in statutory text, whereas RFRA, if applicable, is explicit legislation that could not be more on point. Given the absence of other relevant statutory language, the RFRA must be deemed the full expression of Congress's intent with regard to the religion-related issues before us and *displace* (emphasis added) earlier judge-made doctrines...City of Milwaukee v Illinois, 451 US 304, 314 (1981)("...when

Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of lawmaking by federal courts disappears."). Hankins at 9-10.

The appeals court cited the following facts from the trial record. The Methodist Book of Discipline, according to that church, is neither sacrosanct nor infallible, but is the most current statement of how Methodists agree to live together as an inclusive society without regard to ethnic origin, economic condition, gender, age or disability. Hankins' complaint alleged that the Book of Discipline contains subjects that are sectarian and ecclesiastical in nature, related to a deity.

scriptures, tenets of the Methodist Church, biblical theology, teachings of John Wesley, and others, as well as secular and civil subjects, not being controlled or influenced by religion, including a citation which Hankins claimed controlled the mandatory retirement policy.

Bishop Lyght told Hankins and church members that despite the age-driven mandatory retirement policy, Lyght had authority to reappoint Hankins as pastor. Lyght also said, however, that it was his personal policy, apart from the Book of Discipline, to never reappoint 70 year old clergy to the church from which they were retired. Hankins filed an ADEA complaint with the federal Equal Employment Opportunity Commission (EEOC), which issued a right to sue letter. Hankins also filed a complaint with the New York Division of Human Rights, dismissed for administrative convenience.

At trial Hankins argued that the mandatory retirement policy violated the ADEA, New York human rights law, and the

NYAC covenant with him, and that Bishop Lyght's personal policy against reappointing violated the ADEA and human rights law. The defendants moved to dismiss for lack of subject matter jurisdiction, citing a federal common law ministerial exception to the ADEA, founded under McClure v Salvation Army, 460 F.2d 553 (5thCir.1972). On appeal Hankins argued that the ministerial exception should not insulate a church's non-religious discriminatory regulations, and defendants countered that the ministerial exception, the free exercise clause, and the establishment clause precluded plaintiff's claims due to their burdens on religion, noting that "for this very reason" Congress passed the Religious Freedoms Protection Act (RFPA).

Hankins' facts are analogous to those of the plaintiff, making Hankins dispositive in this appeal. The Connecticut

Superior Court found that the plaintiff was a ministerial employee (a priest) of a church and had filed a CHRO anti-employment discrimination case against a church employer. The complaint alleged church canon law, church policy, state human rights law, state anti-discrimination law, and federal anti-discrimination law violations and bases for relief. On October 19, 2005 the trial court dismissed the case holding that the federal common law ministerial exception applied to Title VII, the federal anti-discrimination statute on which the plaintiff based his CHRO complaint.

On February 16, 2006, the Second Circuit judged Hankins, which displaced the ministerial exception doctrine as applied to federal law based anti-discrimination claims filed in Connecticut courts (2nd Circuit) by clergy against religious employers, mandated that such cases should be reviewed under RFRA, vacated Hankins' trial dismissal and remanded for

further action under RFRA. Therefore under Hankins the State of Connecticut Appellate Court must vacate the Superior Court's dismissal of the plaintiff's case, and may consider remand for judgment of whether application of Title VII to the plaintiff's relationship with his religious employer violates the RFRA.

II) THE TRIAL COURT ERRED BY FINDING THAT IT WAS BOUND BY THE MINISTERIAL EXCEPTION REGARDING STATE LAW ANTI-DISCRIMINATION CLAIMS, THUS CHRO SHOULD ISSUE A RIGHT TO SUE LETTER TO THE PLAINTIFF.

The trial court held that it must look to federal law for guidance in interpreting Connecticut anti-discrimination law and cited State v Commission on Human Rights and Opportunities, 211 Conn 464 (1989) as support, but the case does not say that at all. In fact that court went to great lengths

to defend the independent judgment of state courts vis a vis federal anti-discrimination claims, particularly concerning Title VII:

> ...it is the clear intent of the legislature in adopting...the Fair Employment Practices Act...was to make the Connecticut statute coextensive with the federal (Title VII)...Although we are not bound by federal interpretation of Title VII provisions, "we have often looked to federal employment discrimination law for guidance in enforcing our own antidiscrimination statute...Nevertheless, we have also recognized that under certain circumstances, federal law defines "the beginning and not the end of our approach to this subject." State v Commission at 470, siting Wroblewski v Lexington Gardens, 188 Conn 44,53 (1982);Evening Sentinel v. National Organization for

Women, 168 Conn. 26 34-5 n.5 (1975).

The plaintiff clearly presented such a case, where federal law at best began but did not end Connecticut's powers to approach the issues of whether priests under federal and state anti-discrimination laws may be protected by our courts from race, color, ethnic and national origin employment discrimination.

The facts of the case alone cry out for such protections. The plaintiff was recruited from Tanzania, East Africa by the Catholic Church of the United States to help that church alleviate a severe priest shortage in Massachusetts and later Connecticut. The plaintiff was assigned to the Diocese of Norwich, Connecticut and served there with complete success for over ten years. He was so successful and dedicated that he in fact founded a Connecticut-based secular non-profit institution to serve the basic human needs of the poor in his home village of Buguruka, Tanzania; some of the world's poorest and most desperate people. Indeed it was in the context of false questioning by his bishop that he has mismanaged his secular non-profit organization, and not due to any work related sanction, that an unqualified white deacon was promoted to a parish administrator in lieu of the truly qualified plaintiff, about

which the plaintiff complained to the CHRO., which held, like the Superior Court, that a ministerial exception existed under Connecticut law precluding subject matter jurisdiction of state and federal anti-discrimination claims.

The plaintiff argued to the trial court that CHRO exceeded its statutory authority and that its decision was void where it was based on a federal common law ministerial exception. Caulkins v Petrillo, 200 Conn 713, 718-19 (1986)l: citing

procedures CHRO used to defend its powers to "recognize" exceptions to statutes, or the intellectual merits of a "ministerial exception" to state and federal aniti-discrimination laws. The only credit the court gave the plaintiff for his arguments was that they evoked sympathy and sentiment, rather than a mandate for thorough legal statutory and other analysis (probably under US Supreme Court sanctioned strict scrutiny and suspect class standards applicable to cases brought by black African Americans). It is thus ironic that Hankins, infra, brought by a white clergyman against his church, was the case to relegate the "ministerial exception" to the history dustbin, where the black African plaintiff in this case argued similarly - that state and federal anti-discrimination statutes trump federal common law exceptions to them - and lost.

Therefore the plaintiff argues that this honorable Appellate Court should not, under Hankins, infra, remand his case to the state tax and administrative appeals court where he was summarily dismissed despite alleging egregious facts and substantial legal bases for that court to reject the "ministerial exception doctrine", but instead invoke its broad discretionary equitable and administrative powers to assure justice and judicial economy by overruling the trial court and CHRO and ordering the CHRO to issue a state right to sue letter to the plaintiff, without which the plaintiff cannot bring anti-discrimination suits in state courts against private parties. This was the relief sought from the trial court.

It is clear that the plaintiff has already suffered great personal loss and significant legal delays by legally flawed state judgments. The plaintiff has already provided the courts with ample proof that the ministerial exception does apply in Connecticut, and that to further deny him a CHRO right to sue

letter would not serve justice. It is in the interests of all concerned that the complex issues of employment rights between clergy and churches be contested in the most suitable available forum - the Connecticut Superior Court of general civil jurisdiction. Connecticut has passed its own version of the federal Religious Freedoms Restoration Act. See CGS Sec. 52-571b; "Action or defense authorized when state or political subdivision burdens a person's exercise of religion". After Hankins, infra, it is foreseeable that Connecticut courts and agencies will be compelled to confront clergy-church employment dispute subject matter on the basis of statues rather than common law. Therefore, in the instant case, the Appellate Court would best serve justice and judicial economy by ordering CHRO to issue a state right to sue letter to the plaintiff so he may bring his case before a full trial court rather than an administrative one.

Conclusion

For the foregoing reasons this honorable Appellate Court should void and overrule the trial court's and the CHRO's

dismissal of the plaintiff's anti-discrimination claims, and order the CHRO to issue the plaintiff a right to sue letter, so he may pursue his anti-discrimination rights guaranteed by the US and state constitutions, and federal and state statutes.

Respectfully submitted this 3rd day of April, 2006.

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